

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

LOUIS CARUSO	:	
Plaintiff	:	CIVIL ACTION
	:	
v.	:	
	:	
LIFE INSURANCE COMPANY OF	:	NO. 00-2329
NORTH AMERICA	:	
Defendant	:	

MEMORANDUM AND ORDER

YOHN, J. June , 2000

Plaintiff Louis Caruso sued defendant Life Insurance Company of North America [“LICNA”] for ceasing to pay him monthly disability benefits in January 1995. Pending before the court is the defendant’s motion to dismiss for failure to state a claim upon which relief can be granted. Because the face of the complaint reveals that the statute of limitations ran before the plaintiff filed his complaint, the court will grant the defendant’s motion.

I. Background

The plaintiff’s complaint contains the following allegations. In 1992, the plaintiff was employed by Consolidated Rail Corp. in Philadelphia. *See* Notice of Removal (Doc. No. 1) [“Notice”] Ex. A [“Compl.”] ¶¶ 3, 6. As an employee, the plaintiff was covered by a long term disability insurance policy issued by the defendant [“the policy”]. *See id.* ¶ 4. On September 30, 1992, the plaintiff sustained serious injuries that resulted in his being unable to continue working. *See id.* ¶ 6. The defendant paid the plaintiff monthly disability benefits under the policy from April 1993 through December 1994. *See id.* ¶ 7. On December 12, 1994, the

defendant notified the plaintiff that it no longer considered him totally disabled and that he would receive no more monthly disability benefits under the policy. *See id.* ¶ 8. The plaintiff remains totally disabled. *See id.* ¶ 10. The defendant has made no payment under the policy since December 1994. *See id.* ¶ 13. This suit resulted.

II. Legal Standard

The defendant has filed a motion to dismiss for failure to state a claim upon which relief can be granted. *See* Fed. R. Civ. P. 12(b)(6). The purpose of a Rule 12(b)(6) motion is to test the legal sufficiency of the complaint. *See Sturm v. Clark*, 835 F.2d 1009, 1011 (3d Cir. 1987). In deciding a motion to dismiss, the court must “accept as true all allegations in the complaint and all reasonable inferences that can be drawn from them after construing them in the light most favorable to the non-movant.” *Jordan v. Fox, Rothschild, O’Brien & Frankel*, 20 F.3d 1250, 1261 (3d Cir. 1994). At this stage of the litigation, “[a] court may dismiss a complaint only if it is clear that no relief could be granted under any set of facts that could be proved consistent with the allegations.” *Hishon v. King & Spalding*, 467 U.S. 69, 73 (1984). The court may consider a statute of limitations issue in a motion to dismiss “where the complaint facially shows noncompliance with the limitations period and the affirmative defense [of the running of the statute of limitations] clearly appears on the face of the pleading.” *Oshiver v. Levin, Fishbein, Sedran & Berman*, 38 F.3d 1380, 1384 n.1 (3d Cir. 1994).

III. Discussion

The defendant argues that the plaintiff has failed to state a claim upon which relief can be granted because the face of the plaintiff's complaint reveals that the statute of limitations has run on his only claim. *See* Mem. of Law in Supp. of Def. LICNA Mot. to Dismiss pursuant to Fed. R. Civ. P. 12(b)(6) (Doc. No. 2) ["Def.'s Mem."] at 2-4. The court agrees.

According to the defendant, the common law breach of contract claim asserted in the complaint is actually a claim pursuant to 29 U.S.C. § 1132(a)(1)(B) for denial of benefits due under the terms of an employee benefits plan because the breach of contract claim was preempted by the Employee Retirement Income Security Act of 1974, more commonly known as "ERISA."¹ *See* Notice ¶ 4 (citing *Metropolitan Life Ins. Co. v. Taylor*, 481 U.S. 58 (1987)); Mot. to Dismiss Pl.'s Compl. pursuant to Fed. R. Civ. P. 12(b)(6) (Doc. No. 2) ["Def.'s Mot."] ¶ 7. ERISA allows a beneficiary of a covered plan to bring a civil suit "to recover benefits due to him under the terms of his plan." 29 U.S.C. § 1132(a)(1)(B). ERISA does not, however, set out a statute of limitations for such a claim. *See Gluck*, 960 F.2d at 1179. As a result, courts must "apply the statute of limitations for the state claim most analogous to the ERISA claim pursued." *Id.*

The state claim most analogous to a claim for denial of benefits due under the terms of a covered plan is a breach of contract claim. *See id.* at 1181-82; *see also Crane v. Asbestos*

¹The plaintiff disagrees with the defendant and claims to be asserting claims both for breach of contract and for denial of benefits under ERISA. *See* Pl.'s Reply to Def.'s Mot. to Dismiss Pl.'s Compl. (Doc. No. 4) ¶ 7. For the purpose of resolving the defendant's motion, it does not matter which party is correct because the statute of limitations that applies to a denial of benefits claim under ERISA is the same as the statute of limitations that applies to a common law breach of contract claim. *See Gluck v. Unisys Corp.*, 960 F.2d 1168, 1181 (3d Cir. 1992). Consequently, the court does not reach the issue of what cause/causes of action is/are actually asserted by the plaintiff.

Workers Philadelphia Pension Plan, Civ. A. No. 95-4173, 1998 WL 151801, at *1 n.4 (E.D. Pa. Apr. 1, 1998); *Cohen v. Zarwin & Baum, P.C.*, Civ. A. No. 93-2145, 1993 WL 460795, at *3 (E.D. Pa. Nov. 9, 1993). Under Pennsylvania law, the statute of limitations for this kind of breach of contract claim is four years. *See* 42 Pa. Cons. Stat. § 5525(8). Thus, a complaint asserting a denial of benefits claim must be filed within four years of “the time when a claimant first knows that the benefit has been infringed or removed,” or the statute of limitations will bar the claim. *Gluck*, 960 F.2d at 1181; *see also Romeo & Sons, Inc. v. P.C. Yezbak & Son, Inc.*, 652 A.2d 830, 832 (Pa. 1995) (acknowledging that the statute of limitations requires a plaintiff to file a breach of contract claim within four years of “the time of the breach” (internal quotation marks omitted)).

According to the complaint, the plaintiff knew by January 1995 that his monthly disability benefits had been terminated. *See* Compl. ¶¶ 8, 13. Thus, the plaintiff must have filed his complaint by January 1999 in order to avoid running afoul of the statute of limitations. *See* 42 Pa. Cons. Stat. § 5525(8); *Gluck*, 960 F.2d at 1181. The plaintiff did not file his complaint until March 2000, and the complaint suggests no reason for the delay. *See* Compl. at 1. Therefore, the court concludes that the face of the plaintiff’s complaint reveals that his suit is barred by the statute of limitations.

IV. Conclusion

For the foregoing reasons, the court will grant the defendant's motion and will dismiss the plaintiff's complaint without prejudice.² An appropriate order follows.

²The court will dismiss the plaintiff's complaint without prejudice because the briefing suggests that circumstances not alleged in the complaint may have either prevented the statute of limitations from beginning to run or tolled the statute of limitations after it began to run. *See* Mem. of Law (Doc. No. 4) at 2-5. The court encourages the plaintiff to file an amended complaint that gives some explanation of how the four year statute of limitations did not run during the more than five years that elapsed between the plaintiff learning of his loss of benefits and the complaint being filed.

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

LOUIS CARUSO	:	
Plaintiff	:	CIVIL ACTION
	:	
v.	:	
	:	
LIFE INSURANCE COMPANY OF	:	NO. 00-2329
NORTH AMERICA	:	
Defendant	:	

ORDER

YOHN, J.

AND NOW this day of June, 2000, upon consideration of the defendant's motion to dismiss (Doc. No. 2), the plaintiff's response thereto (Doc. No. 4), and the defendant's reply thereto (Doc. No. 5), IT IS HEREBY ORDERED that the defendant's motion is GRANTED. The plaintiff's complaint is DISMISSED WITHOUT PREJUDICE to his right to file an amended complaint within ten (10) days of the date hereof.

William H. Yohn, Jr.